

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 13TH DECEMBER 2007 / 22ND AGRAHAYANA 1929

Bail Appl..No. 7649 of 2007

(CRIME NO. 337/2006 OF MANJESHWAR POLICE STATION)

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PETITIONER/ACCUSED:

**DHARMARAJ,AGED 34,
S/O. LATE GOVINDA,HONNA, UDYAVARA,
KASARGOD.**

**BY ADV. SRI.VARGHESE C.KURIAKOSE,
ADV.SRI.PRAVEEN K. JOY.**

RESPONDENT/COMPLAINANT & STATE:

- 1. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.**
- 2. SUB INSPECTOR OF POLICE
MANJESHWAR POLICE STATION.**

BY PUBLIC PROSECUTOR SRI. JAI GEORGE.

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 13/12/2007,THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

R.BASANT, J

B.A.No.7649 of 2007

Dated this the 13th day of December, 2007

ORDER

Application for anticipatory bail. Petitioner faces allegations in a crime registered under the Kerala Abkari Act. He was allegedly found to keep in his possession 800 packets of Karnataka arrack each containing 100 ml. The petitioner could not be arrested. Investigation was completed. Final report has already been filed. Cognizance has been taken and the proceedings are pending as C.P.212 of 2007 of J.F.M.C, Kasaragode. The petitioner apprehends imminent arrest in execution of coercive processes issued by the learned Magistrate.

2. According to the petitioner, he is absolutely innocent. His absence earlier was not wilful or deliberate. He is willing to surrender before the learned Magistrate and apply for bail. But he apprehends that his application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. The petitioner, in these circumstances, has come before this Court for issue of appropriate directions under Section 438 and/482 Cr.P.C in his favour.

3. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of an accused who apprehends arrest in execution of a non bailable warrant issued in a pending

proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police** [2003(1) KLT 339].

5. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

rtr/-

